IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 361 OF 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NEW INDIA INSURANCE CO. & ORS. - Appellant(s)
Versus
GAURIBEN KARMANBHAI - Respondent(s)

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Appearance :
Ms. Archana Acharya for Appellant(s) : 1 - 3.
Shri Mehul S. Shah for Respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

The owner, driver and the Insurance Company, being aggrieved by the judgement and award dated 22nd December, 1988

passed by the learned Motor Accident Claims Tribunal (Main), Rajkot in Motor Accident Claims Case No.95 of 1984, have filed this appeal.

2. Ms. Archana Acharya, learned Counsel for the appellants, on being confronted with the judgement of the Supreme Court in the matter of ***H.S. H. S. Ahammed Hussain & Anr. vs. Irfan Ahammed & Anr.,*** [***AIR 2002 SC 2483***], submits that the owner and the driver of the vehicle, who are also the appellants, be transposed as respondents and the appeal be heard for and on behalf of the Insurance Company only. The permission is accorded. Office shall make necessary amendment in the Appeal Memo.

3. The learned Counsel for the appellant does not challenge the accident and the liability of the driver, so also of the owner, because the said defences are not available to the Insurance Company. Ms. Acharya, learned Counsel for the appellant, however, submits that the claim petition was filed by Gauriben Karmanbhai through her next friend and guardian father - Karmanbhai Akhubhai, but, the Court did not observe the provisions available under Order XXXII of the Code of Civil Procedure, 1908 (“the Code” for short). She submits that in absence of any inquiry at the initial stage, the petition could not be proceeded with. Her further submission is that the medical evidence available on the record falls short to prove that the injuries suffered by the claimant led

to her mental disorder.

4. Shri Mehul S. Shah, learned Counsel for the respondent, however, submits that non-making of the inquiry under Order XXXII of the Code at the very initial stage would not amount to an illegality, but, would be an irregularity, which can be cured at any time. He also submits that the Insurance Company cannot be allowed to challenge the evidence of the doctor, which connects the injury with the post accident mental disorder. On the merits, he, however, submits that from the statements of Dr.Hasmukh Muljibhai Kakkad, Psychiatrist (Exh.51), it would clearly appear that the mental condition of the claimant, Gauriben, was not proper. She was making complaints of various nature and she was suffering from post traumatic dementic syndrome with anxiety and depression, which would mean that she was unable to control herself and she was not in a position to do the regular work even as an ordinary labour. He submits that the appeal deserves to be dismissed.

5. True it is that in a civil suit, the provisions of Order XXXII of the Code are required to be scrupulously observed, but, a claim matter is not a civil suit though it is registered as a civil matter and is tried as a civil matter/suit. From the provisions of the Motor Vehicles Act, and the Motor Vehicles Rules, it would appear that the provisions of the Code

shall be made applicable as far as possible. In relation to an inquiry into the mental disorder or mental derailment, if the Court does not make the inquiry right in time and if an issue is cast or the parties being alive to the pleadings and the defences, lead evidence and ultimately, a finding is recorded that the claimant before the Court is mentally derailed or is suffering with some mental disorder, which segregates the claimant from a man of ordinary prudence, then, the finding on such issue would cure the basic defect. In the present case, from the statement of Dr. Kakkad (Exh.51), it would clearly appear that the girl had suffered post traumatic dementic syndrome with anxiety and depression. From the evidence of the father of the girl and other material available on the record, it would clearly appear that the girl claimant had developed forgetfulness and she was unable to concentrate on anything and if these are the ailments suffered by the claimant, then, obviously she can be termed to be mentally abnormal. If a person is mentally abnormal, then, such person can always sue through the next friend.

6. Taking into consideration the totality of the circumstances, I must hold that non-making of the inquiry at the initial stage would not make the claim petition untenable and I would further hold that if there was any defect, then, the same was not an illegality, but, was a curable irregularity.

7. So far as the arguments relating to the injury and the ailments are concerned, ordinarily, the Insurance Company would not be allowed to raise such point because that is not the defence available under Section 95(2) of the Motor Vehicles Act, but, however, I must observe that from the evidence available on record, it clearly appears that prior to the accident, the girl was living a normal life and post accident, she is suffering with many ailments and one of such ailment is post traumatic dementic syndrome with anxiety and depression. It is also to be seen that the claimant had suffered contused lacerated wound over left ear upper part of 1 cm. x 1½ cm. x 11½ cm. This injury certainly could disturb the brain, though in the cross objection, it was suggested that such minor injury could not lead to mental disorder, but, the doctor has clearly said that any minor injury can cause mental imbalance.

8. On the facts, I must hold that the girl has suffered mental derailment as a result of the injuries, which she suffered in the accident.

9. On both the counts, I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

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